



# Blowing the Whistle On Wildlife Crime:

How the Wildlife Conservation and Anti-Trafficking Act  
Will Incentivize Wildlife Whistleblowers

*An in-depth analysis by National Whistleblower Center for the Whistleblower Protection Blog*



# SECTION 1

## The Importance of Whistleblower Laws and Rewards for Combating Crime



A whistleblower is one who discloses information regarding potential violations of law to appropriate authorities under a whistleblower protection or reward program. These whistleblowers are crucial in revealing complicit activities to the respective authorities, often activities which would normally go unnoticed, uninvestigated, and, most detrimental to societal rule of law, unpunished. For example, whistleblowers often known for action such as disclosing bribery of government officials by persons seeking to obtain a business advantage, or other corrupt activity which undermines the rule of law.

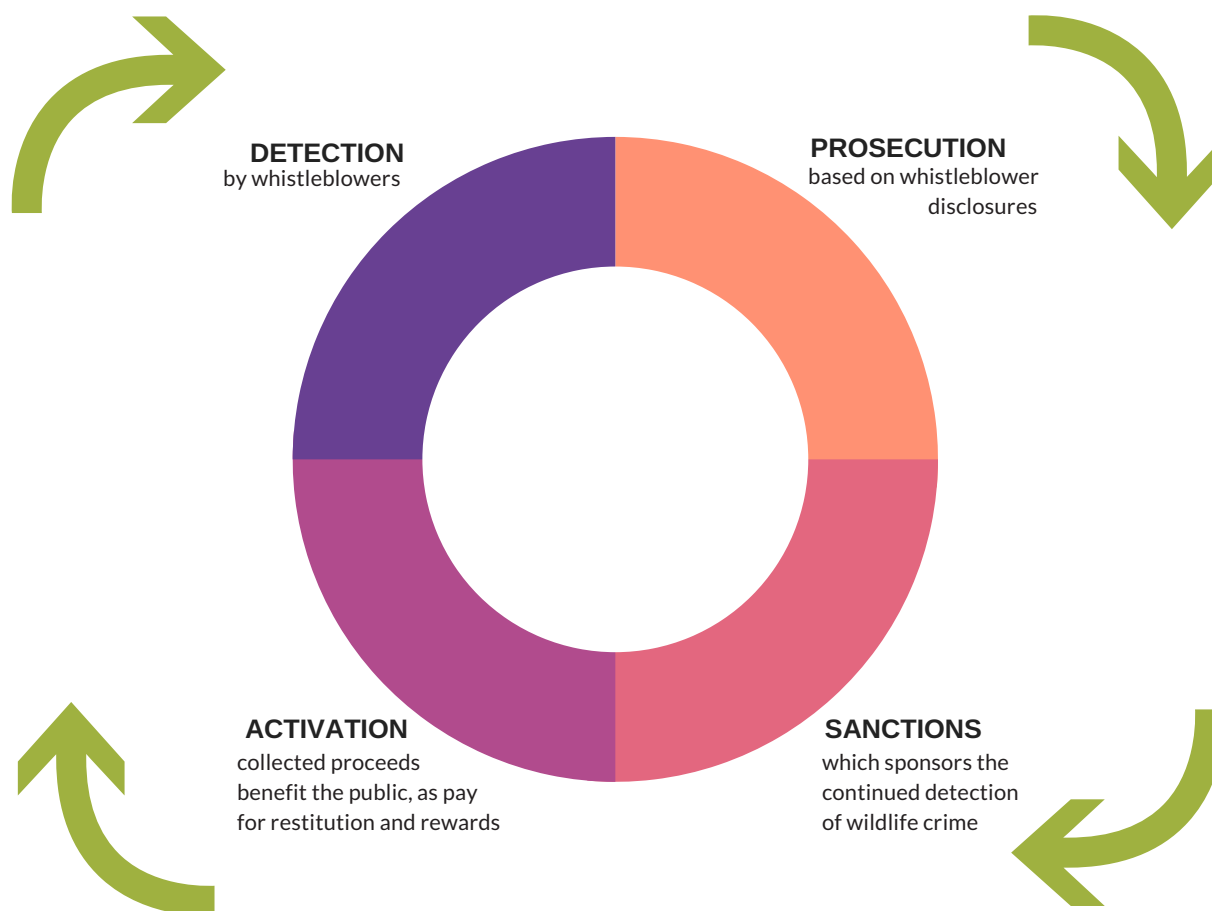


Whistleblower reward laws are “the most powerful tool the American people have to protect the government from fraud.”

— Former Assistant Attorney General Stuart Delery (2014)



## The Cycle of Accountability



The theory of why whistleblowing works is centered on a cycle of accountability. Successful prosecutions resulting from whistleblower tips create this five-step cycle: (1) encouragement of whistleblowing; (2) detection and reporting by whistleblowers; (3) prosecution based on whistleblower disclosures; (4) sanctions that sponsor the continued detection of crime and deter future crime; and (5) use of the collected proceeds to benefit the public through restitution and rewards. This is a system that rewards those that follow the law and curbs illegal activity by altering behavior through incentives and good governance.

While awareness of the importance of whistleblowers is growing, until the protections and rewards offered to these informants are widely known and easy to use, having these laws on the books is just the beginning. In order to ensure that such programs which utilize whistleblowers to catch corruption and other illicit activity work effectively and efficiently, implementing best practices on whistleblower programs is crucial. To truly advocate for and encourage whistleblowing, public education campaigns, whistleblower program implementation, and accountability mechanisms must be employed.

## SECTION 2

### A New Law: Utilizing Best Practices to Combat Wildlife Crime



A recent example of the potential for effective whistleblower policy implementation is the [Wildlife Conservation and Anti-Trafficking Act](#). This landmark piece of wildlife whistleblower legislation attacks the insidious wildlife crime trade by utilizing whistleblowers.



The “whistleblower program... has rapidly become a tremendously effective force-multiplier, generating high quality tips, and in some cases virtual blueprints laying out an entire enterprise, directing us to the heart of the alleged fraud.”

— Former Chair Mary Jo White, U.S. Securities and Exchange Commission (2013)



## H.R.864 - Wildlife Conservation and Anti-Trafficking Act of 2019

116th Congress (2019-2020) | [Get alerts](#)

**BILL**

Hide Overview ✕

**Sponsor:** [Rep. Garamendi, John \[D-CA-3\]](#) (Introduced 01/30/2019)

**Committees:** House - Natural Resources; Judiciary

**Latest Action:** House - 01/30/2019 Referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. ([All Actions](#))

**Tracker:**

Introduced > Passed House > Passed Senate > To President > Became Law

The bill strengthens wildlife crime detection as it mandates whistleblower rewards for citizens and NGOs worldwide who report information on wildlife crime, with a successful prosecution. The bill enhances enforcement mechanisms as it expands transnational law enforcement to stop wildlife trafficking at its source. Wildlife trafficking becomes an offense under federal racketeering and organized crime statutes. Finally, the bill increases wildlife conservation funding as monies recovered by successful prosecution under said statutes and other wildlife protection laws must be put directly into conservation efforts.

It expands wildlife anti-trafficking efforts by directing agencies to implement authorities provided by current law to reward whistleblowers, require concrete steps to recruit whistleblowers,

standardize the process for determining rewards for wildlife whistleblowers, and directs penalties paid to the U.S. government to support wildlife conservation efforts around the globe at no expense to American taxpayers. This bill embodies numerous best practice tips, specifically clarity and standard-ization, while utilizing the incoming funding to directly counter the crimes. This law has the potential, if implemented well, to be the most effective whistleblower provision to date. The impact will be extensive in terms of wildlife trafficking reduction, increasing whistleblower awareness, and modeling clean and precise administrative procedures. This is the future of whistleblower provisions.



## SECTION 3

# Whistleblower Best Practices Are In Several Current U.S. Whistleblower Programs

### A. Public Education and Awareness

For whistleblowers to come forward, a public education campaign is a crucial first step. Public education campaigns foster awareness, promote effective use of whistleblower protections, and generate a culture which values whistleblowers. Encouraging a pro-whistleblower culture and aiding the use of such protections starts with a clear communication plan to address outreach to both the public and government personnel regarding these provisions. In May 2018, the [U.S. Government Accountability Office \(GAO\) published a report](#) after spending over a year reviewing the implementation of U.S. wildlife whistleblower laws under the U.S. Fish and Wildlife Service (FWS) of the Department of Interior, and the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce, which administer such laws.

The GAO recommended that FWS and NOAA track financial reward information, develop a communication plan to the public on financial rewards, and review the effectiveness of financial rewards to implement any changes needed to enhance the usefulness of financial rewards as a law enforcement tool. These recommendations included tracking financial rewards clearly and in a manner easily accessible in the future, specifying factors used in evaluation award applications, developing clear expectations for the information to be communicated in regards to the programs, and establishing a review of the agency's use of financial rewards

in order to identify and address the usefulness of the rewards as a law enforcement tool. The report mainly focuses on the importance of the units to advertise the financial incentives in order to engage the public with their investigations and inform the people of the benefits of being a whistleblower.

Over time, as communication and outreach campaigns continue to educate the public and government personnel, it is clear that understanding of whistleblower protections is on the rise. For example, according to [reports by the U.S. Securities and Exchange Commission \(SEC\)](#), whistleblower tips are on the rise, with only 334 in FY2011, at which time the program was audited and then required to comply with additional Congressional oversight, 3,001 in FY2012, and improved greatly to 4,484 in FY2017.

An important component for whistleblower best practice is the creation of user-friendly websites. These websites serve as continuous and easy to access resources for the public and potential whistleblowers. This primarily includes posting information to public websites, including the laws and protections available for whistleblowers. Clear and public sharing of information will ensure tip submission will be thorough and accurate, including all information needed to move the reporting process forward. This serves the dual purpose of public education and aid to whistleblowers seeking to submit information; it is critical for encouraging and facilitating whistleblowing. Simply publishing

the information, however, is far from adequate. Publicity for sites, resources, and programs must be a central component for public education related to whistleblowing. If these programs seek to promote accountability, transparency to the public publicity must be treated as the importance first part of the cycle. To create this cycle, policies clearly describe, and programs publicized, leading to an organic, self-sustaining push for accountability.

One example of such a practices is the SEC's annual report of its whistleblowing program to Congress, made public. It offers highlights of the top ten whistleblowers that year, graphic overviews of tips, profiles of whistleblowers, reward numbers, and more. Reporting to the public about the financial numbers and successes of whistleblowing is key. In fact, the GAO report even noted this when recommending improvements to programs, which included beginning to use data tracking, documenting awards, and improving external communications in relation to whistleblowers.

A shift in understanding whistleblowers as valued tools of good governance helps to empower whistleblowers who take the hard steps of coming forward, by displaying social support for such actions. Whistleblowers are not 'rats' or 'tattletales', but instead display bravery in standing up for all. Organizations can show support by encouraging and welcoming whistleblowing. Whistleblowers are good for society, and they should be rewarded as such. Colleagues and peers should be empathetic and understanding about the difficult position in which whistleblowers are placed. Whistleblowers are everyday people reporting the big companies, the wealthy, and the powerful; their bravery must be supported and applauded.

From an employer or agency perspective, the office culture should be one which encourages internal compliance, directs management to respect and quickly act on reports of any issues from subordinates, and displays a clear commitment to employees that their internal reports are welcome, will be kept confidential.

## B. Program Implementation

The GAO audit referred to the importance of learning from other agencies in order to implement truly effective whistleblower programs at FWS and NOAA. These lessons learned include the importance of internal policies that clearly delineate each piece of the puzzle when there is a whistleblower tip. The GAO explicitly noted that effective program implementation necessitates that applications for rewards be tracked, defined standards are used for timely review, and the files are securely maintained. However, even more is needed for an effective whistleblower program.

Criteria for a reward is to be outlined and internal policies should instruct staff how to assess and determine awards. The criteria must be clear and uniform, and awards must be situational and not arbitrary. The metrics for reward determination ought to be based on percentage of total funds obtained by the government, total cost of illegal goods, profit, and/or damage caused. Financial rewards as a percentage of government gains will incentivize high-quality tips. These tips must be thorough and accurate in order to lead to a successful prosecution, which is one of the requisites for whistleblower rewards. An example incorporating these guides can be found in the bill, which provides a standardized process for the Department of the Interior to determine and adjudicate rewards to whistleblowers for wildlife crimes.

In terms of program implementation, when it comes to reward criteria, there are a handful of basic, reasonable guidelines that encourage best whistleblowing practices. First, initial recommendations for awards should not be at the sole discretion of the office applying for it; moreover, separate criteria for supervisory approval ought to also be specified. This promotes greater fidelity by involving outsiders, which allows the involved offices to hold each other accountable. In essence, it allows these agencies to practice what they preach in regards to accountability and transparency. Several agencies

currently have similar processes in place. Second, a key nuance about U.S. whistleblower rewards is their inclusion of international whistleblowers. U.S. whistleblower guarantees apply to all whistleblowers, regardless of citizenship or residency, so long as the complicit act in question be under the U.S.'s jurisdiction. Moreover, even NGOs can and should be eligible for rewards, if they serve as the source of information, as is allowed under the Lacey Act and other U.S. laws. Third, in terms of the logistics of these laws, the burden of proof ought to match reality, not theory. The IRS has demonstrated an understanding of the importance of rewarding whistleblowers, rather than putting up obstacles in their way. Fourth, rewards should be mandatory, not discretionary, specified in a court order to avoid the appearance of corruption. For example, the bill mandates a reward percentage floor for whistleblowers.

Effective program implementation also necessitates that there is prioritizing of cases. The importance of this is exemplified in the text of the [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#). The text, specifically Article III, highlights the top 1200 species of the utmost importance to protect, acknowledging some issues are much more severe to address than others in the immediacy.

Effective program implementation also necessitates that there is prioritizing of cases. The importance of this is exemplified in the text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The text, specifically Article III, highlights the top 1200 species of the utmost importance to protect, acknowledging some issues are much more severe to address than others in the immediacy. Similarly, the greater degree of severity of a violation ought to be prioritized. This allows for time-sensitive or higher-damage violations to be investigated and prosecuted before evidence is no longer available or further harm has been done. In the example of CITES, endangered species are prioritized over at-risk spe-

cies. This is due to the fact a delay in addressing issues related to endangered species would leave that species extinct – forever.

Moreover, it is imperative that cooperation occurs internationally and within every state, retaliation is prohibited with or alongside legislation which grants whistleblowers rewards. For example, the bill mandates such interagency cooperation. By requiring that agencies or other branches of the government with jurisdiction work together, all Americans can be assured that the whistleblower program will be run effectively.

As with any program implementation, the policies must be focused on the key component, in this case the whistleblower, if it is to be successful. Perhaps one of the greatest benefits of whistleblower provisions is the ability for the whistleblower to remain anonymous. As such, maintaining confidentiality is key. Confidentiality must go beyond not disclosing the whistleblowers' names, but rather, keeping the very fact that a whistleblower exists under wraps. A whistleblower should be able to remain confidential towards the agency itself (meaning that the complaint is filed by an attorney, who verifies the whistleblowers identity) and towards other agencies potentially involved in the case (meaning that if information is passed from one agency to another, the confidentiality standards remain just as high). If a whistleblower provides the government with documentation of or information as to documentation that would serve as evidence of a violation, the agency should be empowered to obtain that documentation by backchannel (meaning, on a practical level, directly from the company under investigation), in order to ensure that the identity of the whistleblower and the whistleblower's very existence is not compromised. The SEC's whistleblower program is rightly considered the leader in whistleblower protections, because it includes all of these best practices for confidentiality, and so should serve as a model for the future reform of any agency whistleblower programs.



However, if anonymity is breached, it is critical that there are provisions which protect the informant from retaliation. Such provisions show the effectiveness of and encourage trust in the government, and so must be built into program implementation, publicized through education campaign, and revisited in evaluation procedures. The amalgamation of protections, transparent programs, financial rewards, and a pro-whistleblower culture will lead to the most effective practices for whistleblowing. U.S. employment and whistleblower laws serve as an example of this, as these laws protect whistleblowers from both job and other retaliation, and provide compensation and restitution in the case that retaliation is found. While the U.S. relies on whistleblowers to bravely uncover corruption, it's up to others to assist in building a landscape suited for whistleblowing.

### C. Accountability Mechanisms

The fine-tuning of whistleblowing is an unabating process, but it is also a process with a demonstrated history of improvements. Laws and policies have expanded incentives and mandated agencies to develop whistleblower and corruption-prevention measures, among others. Problematic and deficient elements of existing whistleblower reward program can be rectified by following demonstrated previous reforms in other government agencies, a process which should be consistently ongoing to ensure best practices are implemented. The result is proven, the implementation of high quality whistleblower protections and rewards leads to increased and higher quality tips.

The creation of a whistleblower office to advocate for such programs is critical. An example is the [SEC's Office of the Whistleblower](#), which functions as an internal office with a specific mandate for continued coordination on administering whistleblower programs. The office is focused on consistently ensuring the whistleblower program has clear primary goals and coordinates the route to achieve them. The mandates include a number of

requirements. First, the office must work to incorporate best practices from other agencies' bounty programs: specified as bounty applications, analysis of whistleblower information, tracking of whistleblower complaints, recordkeeping practices, and continual assessment of the whistleblower program (examples include the Department of Justice, Internal Revenue Service, and the SEC). Second, it must expand its understanding that patterns of retaliation against whistleblowers can impede communications and reporting. Third, it must promote public awareness of whistleblower programs, as well as the internal understanding of the program by the employees running it. For instance, the SEC's office has "information about the programs, copies of forms required to submit a tip or claim an award, a listing of enforcement actions for which a claim for award may be made, links to helpful tips, and answers to frequently-asked questions" including a section dedicated to retaliation-related issues. The GAO report cites these as critical shortcomings in need of reform in the FWS and NOAA's current whistleblower program.

Ideal practices for whistleblowing demand mechanisms to ensure, test, and improve the system's accountability. The nexus of any accountability process is a multifaceted approach to oversight.

First, internal oversight is centered in the Office of the Whistleblower, which is specific to its particular branch or agency. This is an important first component as it allows for localized correction of issues and ensures an office-based culture of accountability.

Second, oversight through elected or appointed leaders is the necessary reporting of programs and data to the governing bodies; for example, the SEC offers an annual report to Congress on its whistleblower program, as well as Congress's ability to question various agencies in public or private committees. This oversight allows for those chosen by the masses to ensure that agencies are abiding by the laws and principles laid out by elected poli-

cy-makers. Elected representatives and/or the bully pulpit can also serve as an important catalyst for change.

Third, oversight through governmental audit includes a specific director or function in place to perform such audits; a good example of this is the Inspector General's function within the U.S. Department of the Interior. This oversight is crucial for addressing issues when the individual agencies and/or the partisan representatives have failed to address issues and/or implement accountability efforts.

Fourth, oversight through FOIA and the press involves the free flow of information, including certain cases and/or the data exemplifying the errs and the advantages of whistleblower programs. This is the oversight by the masses. Because the FOIA and free press allow the people to have access to government workings and federal agency's records. This allows for the people to see and evaluate if any of the above oversight functions are failing to uphold their duties.

As a component of general oversight functions, audits are necessary, as shown by the reform of the SEC's whistleblower program. Audits are independent investigations which inspect or analyze an organization's accounts and documents. Audits of whistleblower programs offer an assessment of the management controls and measure the effective operation of bounty programs, allowing the agency to analyze data, assess successes, and address any problematic trends. The SEC's annual report to Congress demonstrates an effective use of the auditing function, as Congress serves as the mandate for the SEC to audit itself on a regular basis. These audits ensure transparency within the protection and reward programs, offering data and inquiry opportunities to promote clarity, standards, and the identification of trends. To ensure these audits and oversights are effective, however, data collection is required. The data collection mandate must do

more than clearly track information – it also designates the party or office to perform these duties, as well as who has access to the information, either on an on-going basis or later – with an emphasis on future accessibility of said data.

This data should include the sheer number of whistleblower tips received, breakdowns of procedural and legal results, and which steps in the process were completed. By tracking this data, annual, as well as, situational reports can be easily generated. Tracking the data alone is not adequate, however. As the GAO found in their report, FWS did not have automatic data records. This manual processing of the data is slow and is not necessarily comprehensive. The report highlights that it is crucial to have all the data and to have it easily accessible at any time. Essentially, the report vindicated the National Whistleblower Center's long-held belief that reward programs only work if there is accessible data about the programs.

In every measure, financial transparency is key to effective whistleblower program implementation. As whistleblowers bring in cases, these cases lead to prosecutions, these prosecutions render financial penalties, and these penalties result in funds paid to the organization, the organization must exemplify transparency. Most importantly, the organization must clearly account for all funds and balances. Amounts must be designated as deposited, earned, and/or paid; they must also be clearly connected to the respective case and disbursement of funds must be tracked. Lastly, these details must be readily presentable to the oversight mechanisms in place. For example, H.R. 5697 (2018) / H.R. 864 (2019) dictates a plan of action be made for the agencies to include concrete steps to help recruit whistleblowers by increasing public awareness about monetary reward opportunities, which would reasonably involve clear data maintenance.

## SECTION 4

It is time to pass **this law** and activate whistleblowers in the wildlife arena.



Whistleblowing is instrumental in creating an accountable, law-abiding world. The Wild-life Conservation and Anti-Trafficking Act utilizes all of the lessons learned of best practices. Best practices for whistleblowing include stringent public education campaigns, effective implementation, and the establishment of accountability mechanisms. Public education must be thorough, user-friendly, and foster a culture hospitable to whistleblowing. Programs created to aid whistleblowers must be implemented so that criteria is clearly defined, uniform, and accessible to both the public and the agencies' employees. Provisions which allow for, and inform whistleblowers about, anonymity and their rights are critical for proper implementation. Lastly, it is crucial that mechanisms are in place to ensure that systems are functioning well. This includes regular and as-needed audits, in-

dependent offices to manage whistleblower affairs, and a thorough record of the related data.

This bill embodies all of these ide-als and would be a powerful force for whistleblow-er rights and wildlife protection. The bill should be quickly passed and implemented to help end wildlife trafficking and set the standard for the use of whistleblowing programs. At the heart of this, however, is understanding. Understanding the laws, programs, rights, and incentives is crucial in any successful whistleblower program. Ensuring oth-ers know these privileges and fostering a world of transparency and accountability will not only ben-efit brave whistleblowers, it will benefit the entire world.



# ACKNOWLEDGEMENTS

**Maya Efrati** is a Legal Fellow at the National Whistleblower Center. Her work focuses on strengthening the institutions of our democracy and advocating for good governance reforms with nonprofit organizations, including policy analysis, legislative advocacy, and as legal counsel. She earned her J.D. from the University of Michigan Law School, simultaneously earning her M.P.P. from the University of Michigan Gerald R. Ford School of Public Policy. In a legal capacity, she previously worked for the Michigan Innocence Clinic, the Center for American Progress, FairVote, and Represent.Us. Before law school, she also worked for a large Congressional campaign, AFSCME Council 36, and the Peres Center for Peace, among others.

**Julia S. Malleck** is a Communications Fellow at the National Whistleblower Center. She graduated *magna cum laude* from Tufts University in 2016 with a B.A. in International Relations, and has also studied at SOAS, University of London, and at Suzhou University in China. Previously, Ms. Malleck has interned for the Society for International Development, EastWest Institute, and in UK Parliament for former MP Rt Hon Simon Hughes.

**Jacob R. Gardner** is an Intern at the National Whistleblower Center in conjunction with his participation in the Wisconsin in Washington, DC program through the University of Wisconsin - Madison. He is a current Pre-Law student at UW - Madison and studies Political Science and Communication Arts. Mr. Gardner has previous experience with higher education institutional leadership and campus-based sexual/dating violence prevention and survivor support education.